IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Meghwal Samaj Vs. Collector, Pali & Others.
(S.B. Civil Writ Petition No.361/2004)

DATE OF ORDER : May 14, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. R.S. Chundawat for the petitioner.
Mr. B.P. Bohra for the respondent(s).
Mr. S.N. Tiwari, Dy. G.A.

BY THE COURT :

By this writ petition, the petitioner is challenging the order dated 30.08.2003 passed by the Collector, Pali and, so also, prayed for quashing patta dated 13.03.1991 Annex.-1.

According to facts of the case, this petition has been filed by Meghwal Samaj of village Sasari Tehsil Desuri (Distt. Pali) and petitioner Samaj members have contended that respondent No.2 granted patta vide misal (file) No.6/95 on 13.03.1997 to respondent No.3 free of cost. The said patta is Annex.-1 to the writ petition. According to the petitioner, the land for which the patta was given to

respondent No.3 is in possession of the Samaj and the members of the Samaj used it for marriages, condolences and holding meetings etc. in the interest of the society.

It is contended in the writ petition that the said patta was issued, without making the information public, silently by the Sarpanch in disregard of the provisions of the governing Act and Rules, therefore, a revision petition was filed under Section 97 of the Panchayati Raj Act, 1994 and challenged the patta on the ground that after obtaining the order-sheet of the proceedings for issuing patta it has come to the knowledge of the petitioner that after fabricating the order-sheet the patta was issued in favour of respondent No.3 and it is also contended that as per the order-sheet dated 28.02.1997 it is observed in the proceedings that even upon the application for grant of patta there is no signature of respondent No.3. Learned counsel for the petitioner also invited my attention towards the order-sheets of the proceedings.

It is submitted by learned counsel for the petitioner that the complete procedure which is said to be adopted for issuing the patta is concocted one and the Gram Panchayat has flouted the provisions of law and in a very strange way the patta was issued. It is also submitted that the order-sheets were inter-polated which is evident from Annex.-3 and even upon the application filed on behalf of respondent No.3 it does not bear signature of respondent No.3. Likewise, it is observed in the inspection report that Narayan Lal,

respondent No.3 is in Bombay but his father is present. It is contended by learned counsel for the petitioner that all these facts were brought to the knowledge of the District Collector while filing the revision petition under Section 97 of the Panchayati Raj Act, 1994 but the same were not considered and while giving finding that patta has rightly been issued because respondent No.3 is in possession of the land as per report dated 15.07.1999, the Collector approved the issuance of the patta by the Gram Panchayat, therefore, the order passed by the District Collector dated 30.08.2003 is illegal and deserves to be quashed because the petitioners are in possession of the disputed land for last nearly 50 years.

On the other hand, it is contended on bahalf of respondent No.3 that the order passed by the Collector is perfectly legal and there is no ground to interfere with the order. It is contended by learned counsel for respondent No.3 that the land in question never belonged to the Samaj and the temple and temple land is away from the pattasud land of the respondent No.3. It is submitted that the aforesaid land was in possession of the Ada Ram (father of respondent No.3) and he applied for patta of the said land on 07.08.1995. Upon the application of Ada Ram, the matter was taken up for necessary enquiry and a committee of three Panchas was constituted for the purpose. It is submitted by learned counsel for the respondent No.3 that upon the report of the enquiry conducted by the committee, vide Annex.-R/3/2, notice was issued inviting objections and, thereafter, an application was filed by

Ada Ram to the effect that if out of the total land, patta for the land measuring 30 x 45 ft is issued in favour of respondent No.3 Narayan Lal free of cost he does not have any objection to it and as such patta for the land in question was issued in favour of respondent No.3. It is contended that patta was issued in favour of respondent No.3 after following due process of law and there was no irregularity or illegality committed by the Gram Panchayat, therefore, while dismissing the revision petition filed by the petitioner, the Collector categorically observed that after having conducted enquiry patta was issued by the Gram Panchayat in accordance with law which does not call for any interference.

I have carefully perused the entire record as well as impugned order dated 30.08.2005.

The petitioner has placed Annex.-3 order-sheets of the misal opened by the Gram Panchayat on the application of Ada Ram for issuance of patta on 07.08.1995. On the next date, the file was taken up by the Gram Panchayat in its meeting and for the purpose of inspection a three member committee of ward-panchas was constituted. On 15.04.1996, the following order-sheet was drawn in the misal :

> "आज दिनांक 18-6-96 को मनोनित वार्ड पंचों द्वारा मौका निरिक्षण रिपोर्ट पेश की गई सचिव द्वारा नक्शा रिपोर्ट के साथ मिसल आगामी बैठक में पेश करें"

It is very strange that in the order-sheet it is mentioned that today is 18.06.1996 though earlier date 18.06.1996 was put in the order-sheet

but, deleting the date 18.06.1996, again date of order-sheet is mentioned 15.04.1996. Then, there is another order-sheet dated 18.06.1996 in which it is mentioned by way of the proceedings to issue notice inviting objections granting one month's time. The next order-sheet is dated 31.07.1996 wherein the following proceedings was drawn :

> "आज मिसल आपत्ति ईश्तिहार के बाद म्याद बैठक में पेश की गई जिसमें किसी प्रकार की आपत्तियाँ पेश नहीं हुई। अत: भूमी की विक्रय की स्वीकृति हेतु मिसल पंचायत समिति की स्टेंडींग कमेटी में पेश की जाय।"

On 18.02.1997, it was observed in the order-sheet that upon perusal of the proceedings it was found that the application does not bear signature of the applicant, therefore, notice be issued to the applicant. However, on the next date 18.03.1997, the Gram Panchayat passed the following order in the proceedings :

> "आज यह मिसल कोरम के समक्ष पेश हुई 75 X 38 की भूमि का नक्शा बनाया गया है जो सही है। नारायण लाल s/o आदाराम के नाम 30 X 45 का निशुल्क पट्टा जारी किया जावे तथा इन में से 30 X 45 फीट की भूमि कम कर दी जावे की स्वीकृति दी जाती है।"

From perusal of the aforesaid order-sheets it is obvious that there was no application made by respondent No.3 and the application that was before the Gram Panchayat was itself unsigned. In the proceedings, there is order-sheet drawn for seeking sanction of the Panchayat Samiti Standing Committee but, in fact, the misal was not sent for the sanction before the Standing Committee of the Panchayat Samiti. It is also obvious that before the Gram Panchayat, the

applicant was Ada Ram, therefore, patta issued in favour of respondent No.3 is issued without his application and that too free of cost. As observed above, sanction of the Standing Committee of the Panchayat Samiti was, in fact, not obtained and patta has been issued without following the procedure under the law. However, while passing the impugned order, all these facts have not been considered by the District Collector, Pali.

From perusal of the impugned order, it appears that after issuance of the patta by the Gram Panchayat, Tehsildar, Desuri was directed by the District Collector, Pali in the revision petition for appointing commissioner for making report of site inspection and the order of the Collector is entirely based on the report of the commissioner. It does not appear that the Collector, Pali has taken into consideration the proceedings of the relevant misal of the Gram Panchayat. In the circumstances, I deem it just and proper to quash the impugned order passed by the District Collector, Pali and remit the case for decision afresh.

Accordingly, the writ petition is disposed of. Impugned order dated 30.08.2003 passed by the District Collector, Pali is quashed and set aside. The matter is remitted to the District Collector, Pali with a direction that after taking into consideration the observations contained hereinabove as well as proceedings of the Gram Panchayat, Sansari, pass proper order after providing opportunity of hearing to both parties, within a period of three months. The Distirct Collector

shall also send for the relevant record of the Gram Panchayat, Sansari and take into account the procedure adopted by the Gram Panchayat at the time of deciding the matter finally and pass order whether patta in question has rightly been issued or not.

There shall be no order as to costs.

(Gopal Krishan Vyas) J.